

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Epic Chemicals, Inc. :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Fiscal Years Ending 6/30/75 - 6/30/77. :

---

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Epic Chemicals, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Epic Chemicals, Inc.  
89 Coffey St.  
Brooklyn, NY 11231

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
30th day of October, 1981.

*Ann A. Hagedorn*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 30, 1981

Epic Chemicals, Inc.  
89 Coffey St.  
Brooklyn, NY 11231

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1979 at 1:15 P.M. Petitioner appeared by Joseph Akselrad. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

# ISSUE

Whether machinery for which the taxpayer claimed an investment tax credit was principally used in the production of goods by manufacturing.

## FINDINGS OF FACT

1. The Department of Taxation and Finance (Department) issued notices of deficiency and statements of audit adjustment as follows:

(a) #C780728006C issued July 28, 1978 covering the period ending June 30, 1975 which sought additional tax plus penalty and/or interest totalling \$1,743.56 arising from the disallowance of an investment tax credit claimed by the taxpayer upon two typewriters, two computers and a fire extinguisher;

(b) #C780728007C issued September 15, 1978 covering the period ending June 30, 1976 which sought additional tax plus penalty and/or interest totalling \$622.51 arising from the disallowance of an investment tax credit claimed by the taxpayer upon a sales office, copying machine and chairs;

(c) #C780728008C issued September 15, 1978 covering the period ending June 30, 1977 which sought additional tax plus penalty and/or interest totalling \$173.31 arising from the disallowance of an income tax credit claimed by the taxpayer upon two time clocks, a desk, an air conditioner, some furniture, a vacuum cleaner and an E.C. Van.

2. The petitioner manufactures chemical products in packaged labeled form.

3. The computers referred to in #C780728006C are employed by the petitioner inter alia to make mathematical calculations relating to alteration of chemical formulae based upon inventory and cost factors to keep manufactured products within quality and profitability parameters. The computers are primarily used to aid in the making of management decisions. They do not physically act upon any raw materials and do not constitute part of the manufacturing process.

4. The typewriters referred to in #C780728006C and the copying machine referred to in #C780728007C are principally employed by petitioner in the printing of labels for its chemical products. The typewriters have special heads used for typing labels. The copying machine is a "Gestetner" machine used for making labels from stencils.

5. The E.C. Van referred to in #C780728008C is primarily used to transport products manufactured by the petitioner.

6. The fire extinguisher referred to in #C780728006C, the sales office and chains referred to in #C780728007C and the time clocks, desk, air conditioner, furniture and vacuum are not used in any manufacturing process.

CONCLUSIONS OF LAW

A. That section 210.12(b) of the Tax Law provides, in part, as follows:

(b) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture of commercial fishing.

B. The typewriters and "Gestetner" copying machine used in the production of labels constitute machinery principally used in manufacturing. The computers were not principally used in manufacturing. The fire extinguisher, sales office and chairs were not used in manufacturing at all. The Department is directed to modify notices of deficiency #'s C780728006C and C780728007C accordingly. Except as so modified, the above notices of deficiency are sustained.

C. The equipment referred to in Notice of Deficiency #C780728008C was not used in manufacturing in any respect and said Notice is sustained.

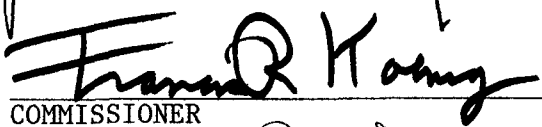
D. The petition is granted to the extent indicated in Conclusion of Law "B" and is otherwise denied.

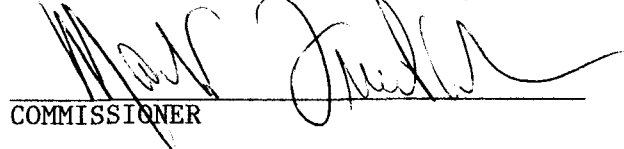
DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER